

FINDING OF EMERGENCY

The State Water Resources Control Board (State Water Board) finds that an emergency exists, and that the foregoing regulations are necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Brownfields are abandoned or underused commercial or industrial properties, where the expansion or redevelopment is hindered by contamination. Brownfields vary in size, location, age and past use. Many Brownfields in California were former gasoline service stations where leaking underground storage tanks (UST) containing petroleum products have caused, and in some cases continue to cause, impacts to soil and groundwater. These properties present public health and environmental impacts, as well as economic challenges, to the communities in which they are located.

In many cases, owners of these Brownfields and other persons who are responsible for cleaning up the contamination (responsible parties) have abandoned the properties. Even if the owners and other responsible parties can be located, the high cost of remediation is an all-too-common impediment to actual cleanup. As a result, these properties sit idle or underutilized. The risk and cost associated with contamination at these sites discourage potential buyers from acquiring these sites. Thus, without viable responsible parties or purchasers who are willing to undertake UST removal and cleanup, the contamination at these Brownfields continues to go unabated and threatens human health, safety and the environment.

The Legislature responded to this problem with AB 1906 (Lowenthal), which appropriates \$10,000,000 per year for 2005, 2006, and 2007, to address petroleum contamination from USTs at Brownfields. The proposed regulations implement this program that disburses funds for the removal of leaking USTs and the investigation and cleanup of petroleum contamination from USTs at Brownfields. The immediate adoption of these regulations is necessary to allow the State Water Board to make timely grants to applicants so that the removal of leaking USTs and the cleanup process can be expedited. Adopting these regulations and quickly providing these grants will protect California's water and ensure that it is safe for drinking and other beneficial uses.

Authority and Reference Citations

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25281, 25296.10, 25299.11, 25299.25, 25299.50.2, 25318.5, 25322, 25323, 25323.3, 25395.20(a)(2)(A) and (B), 25395.20(a)(5), 25395.20(a)(6)(C), 25395.20(a)(12), 25395.20(a)(15), and 25396.20(a)(19), Health and Safety Code, 42 USC 9601, sections (23) -(25), *In re: Combustion, Inc.*, (W.D. La. 1996) 968 F. Supp.1112; *Nutrasweet Co. v. X-L Engineering Corp.* (N.D.Ill 1996) 926 F. Supp. 767; *T&E Industries, Inc. v. Safety Light Corp.* (1988) 680 F.Supp. 696; *United States v. 150 Acres of Land* (2000) 204 F.3d 698; *Pennsylvania Urban Development Corporation v. Golen* (1989) 708 F.Supp. 669; *Amland Properties Corp. v. Aluminum Company of America*

(1989) 711 F.Supp. 784; *Artesian Water Company v. New Castle County* (1987) 659 F. Supp. 1269, *Wehner v. Syntex Corporation* (1987) 681 F. Supp. 651

Informative Digest

The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 authorizes the State Water Board to administer a program to reimburse UST owners and operators for eligible costs incurred as a result of contamination from leaking petroleum USTs. The State Water Board has been administering the Petroleum Underground Storage Tank Cleanup (Fund) for about 14 years. There are, however, numerous legislatively-imposed eligibility requirements, and many responsible parties, including some at Brownfields, are ineligible for this funding.

Assembly Bill 1906 (Lowenthal) established the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount (Subaccount) within the Fund. (See Health and Safety Code, section 25299.50.2.) As stated earlier, AB 1906 provides that \$10,000,000 per year for 2005, 2006, and 2007 shall be transferred from the Fund to the Subaccount to address petroleum contamination from USTs at sites that qualify as Brownfields. The proposed regulations implement and make specific the program created in AB 1906. Specifically, the proposed regulations establish eligibility requirements, a priority system for paying eligible applicants, and funding limitations and define the types of costs that qualify for funding.

The Brownfields issue is a high priority for this administration. The Governor's Action Plan for the Environment calls for the resolution of impediments to the cleanup of brownfield sites, including the thousands of such sites contaminated by releases from USTs. (Governor's Action Plan for California's Environment, November 9, 2003, p. 10.) The objectives of the proposed regulations are to cleanup petroleum UST Brownfields and make productive use at properties that were previously vacant or underutilized. These regulations implement a funding program that removes the financial impediment to the removal of leaking USTs and the cleanup at Brownfields, which helps achieve a goal in the Governor's Action Plan for the Environment.

There are federal funds available for assessment and cleanup at petroleum Brownfields. On January 11, 2002, the President signed into law the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law). The Brownfields Law provides federal financial assistance for brownfield revitalization, including grants for site assessment and remediation. (See 42 USC 9604(k).) The United States Environmental Protection Agency (EPA) administers this grant program. The Brownfields Law allows EPA to award brownfield grants for activities related to petroleum-contaminated sites, including UST sites, that: (1) EPA or the state determines are of relatively low risk compared to other petroleum-related sites in the state; (2) EPA or the state determines have no viable responsible party and that will be assessed or cleaned up by a person that is not a potentially-responsible party; and (3) are not subject to an order issued pursuant to the Resource Conservation and Recovery Act. Under the EPA program, an applicant

may apply for an assessment grant (not to exceed \$200,000 per site, unless a waiver is granted and then the maximum amount is \$350,000) and/or a cleanup grant (not to exceed \$200,000 per site).

These funds are limited. Grants for petroleum Brownfields may not exceed 25% of the appropriation for the fiscal year, and the total (hazardous substance sites and petroleum sites) appropriation for grants awarded in fiscal year 2005 was \$73.7 million nationwide. Because of the funding limits and the competitive nature of these grants, approximately one-third of persons applying for grants from the fiscal year 2005 appropriation did not receive a grant.

Mandate on Local Agencies or School Districts

The State Water Board has determined that the proposed regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact Estimates

State Agencies: The State Water Board has determined that the regulations will involve no additional costs or savings to any state agency.

Reimbursable Cost to Local Agencies or School Districts: The State Water Board has determined that the proposed regulations will not result in any additional cost or savings to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code.

Other Non-discretionary Cost or Savings Imposed on Local Agencies: The State Water Board has determined that there is no cost or savings imposed on local agencies as a result of the proposed regulations.

Cost or Savings in Federal Funding to the State: The State Water Board has determined that there is no cost or savings in federal funding to the state as a result of the proposed regulations.